WASHINGTON, DC – Congressman Robert C. "Bobby" Scott (VA-03) issued the following statement today on Congress' vote on H. Con. Res. 13, a resolution reaffirming "In God We Trust" as the official motto of the United States and supporting and encouraging the public display of the national motto in all public buildings, public schools, and other government institutions:

"Today we face the highest deficit in U.S. history; an unemployment rate of 9.1% and a growing number of people losing access to unemployment insurance each day; schools that lack the resources to give our students a proper education; 17.2 million households that are food insecure; and children who by the very circumstances of their birth are injected onto a Cradle to Prison Pipeline. Instead of facing these challenges and creating jobs to help American people make sure they have a roof over their head and food on their table, we are debating whether or not to affirm and proliferate a motto that was adopted in 1956 and is under no threat of attack. In addition to diverting attention away from substantive issues, the resolution is unconstitutional.

"When we were sworn in as Members of Congress, we took an oath to uphold the Constitution. This resolution is inconsistent with that oath and therefore I voted 'no' on the resolution."

In addition, Congressman Scott's statement from the Judiciary Committee markup on the resolution earlier this year contains a legal analysis and is below.

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Remarks of Congressman Robert C. "Bobby" Scott

Regarding
H. Con. Res. 13, Reaffirming "In God We Trust" as the official motto of the United States and supporting an encouraging the public display of the national motto in all public building, public schools, and other governmental institutions
Judiciary Committee Markup
March 17, 2011

Mr. Chairman, I come from a State that has a long tradition of supporting religious freedom. In fact, it was Thomas Jefferson of Virginia who wrote the Virginia Statute for Religious Freedom, which predates the First Amendment to the Constitution. So it is the First Amendment to the Constitution by which we should judge the constitutionality of this resolution.

The Establishment Clause of the First Amendment states that "Congress shall make no law respecting an establishment of religion." This clause not only prohibits the government from establishing an official religion, but also prohibits the government actions that unduly favor one religion over another. It also prohibits government from unduly preferring religion over non-religion, or non-religion over religion.

For more than 50 years, the Supreme Court has used three interrelated tests to analyze alleged violations of the Establishment Clause. Those are the endorsement test, the coercion test, and the Lemon Test. H. Con. Res. 13 fails all three.

Under the endorsement test, we must ask whether the resolution is an unconstitutional endorsement of one view of religion over another. In fact, it is. First, it prefers religion over non-religion, and that is a violation. Further, it endorses a specific type of religion, monotheism, over other religions, again a violation. In 1992, Justice O'Connor stated that the government's endorsement of a religion "sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."[1] The fact is that the U.S. is comprised of people of many faiths and those who do not believe in religion, as is each person's right. The passage of this resolution would send a message to the American people that our government favors religion, and specifically one religion over another, in violation of the endorsement test.

H. Con. Res. 13 also fails the coercion test, which examines whether individuals are coerced into being exposed to a religious message. In this case, the resolution supports and encourages public display of the national motto in all public buildings, public schools, and other government institutions. As the Supreme Court explained in 1987, "the Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to

advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary."[2] Similarly, people who are compelled to visit government buildings to transact government business, such as obtaining a passport or Social Security card and so forth, are forced to visit the public buildings which their hard-earned taxpayers' dollars paid for, and they will be forcibly subjected to the religious sentiment.

The third test, Mr. Chairman, is the Lemon test, which was derived from the 1971 Supreme Court case Lemon v. Kurtzman[3], which held that there is a violation of the Establishment Clause when there is no secular or non-religious purpose to legislation. The resolution on its face demonstrates that there is no secular or non-religious purpose and therefore it is unconstitutional.

In the past, during a very similar debate in which we were discussing the constitutionality of the phrase "under God" in the Pledge of Allegiance, I indicated that I agreed with the dissent in the case of Newdow v. U.S. Congress[4], and the operative language that I agreed with was:

"Legal world abstractions and ruminations aside, when all is said and done, the danger that 'under God' in our Pledge of Allegiance will tend to bring about a theocracy or suppress someone's belief is so minuscule as to be de minimis. The danger that phrase represents to our first amendment's freedoms is picayune at best.

"Judges, including Supreme Court Justices, have recognized the lack of danger in that and similar expressions for decades, if not for centuries."[5]

Now, thus, the language in the national motto in itself may be de minimis, but this resolution is not.

Today we face the highest deficit in the United States' history, an unemployment rate around 9%, children who by the very circumstances of their birth are automatically injected into the Cradle-to-Prison Pipeline, and a natural disaster in Japan, including the possibility of an imminent nuclear disaster. Instead of facing these realities or dealing with these difficult issues, instead of helping American people make sure they have a roof over their head and food on their table, we are debating whether or not to affirm and proliferate the motto that was adopted in 1956 and is under no threat of attack. Mr. Chairman, this resolution cannot be considered de minimis.

The problem on relying on that principle and enacting this resolution is that the actions may do more harm than good. The de minimis principle is precarious at best. It is easily undermined by the fact that we spend the time we are spending on this resolution and the emphasis we have placed on the importance of the resolution. The importance that we have fixed to this resolution by holding this markup and having the debate increases the magnitude of the attention we give to the issue and subverts the argument that the resolution might be considered de minimis and, in fact, increases the constitutional vulnerability of the resolution.

Mr. Chairman, the resolution fails all three Establishment Clause tests and cannot be

considered de minimis. We therefore, by supporting this passage, violate the Constitution of the United States. When we were sworn as Members of Congress, we promised to uphold the Constitution. Supporting this resolution violates that oath, and for those reasons, and because we have other business to conduct, I hope the resolution is defeated.

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[1] Newdow v. U.S. Congress, 292 U.S. 597, 606 (1992) (quoting Lynch v. Donnelly, 465 U.S. 668, 687-688 (1984) (O'Connor, J., concurring)).

2 Edwards v. Aguillard, 482 U.S. 578, 583-84 (1987).

3 Lemon v. Kurtzman, 403 U.S. 602 (1971).

4 Newdow v. U.S. Congress, 292 F.3d 597 (9th Cir. 2002).

5 Id. at 613.